

Application No. 10/031,637  
Attorney Docket No. PG3693USw

## REMARKS / ARGUMENTS

Claims 1-25, 27-41 were pending prior to this amendment. In this amendment, claim 8 was cancelled, for the reasons mentioned below. Thus, claims 1-7, 9-25, 27-41 remain pending.

### 1. Terminal Disclaimer Overcomes Obvious Type Double Patenting

In the November 2, 2005 Office Action, the claims were rejected under the judicially created doctrine of obvious-type double patenting over US Patent No. 6,929,004. Applicant's disagree with this assertion. However, because the priority dates of the patent and the present application are the same (24 April 1999) the unextended patent terms of the Application and the patent are the same. Because the term of the present case is unaffected, applicants have included a terminal disclaimer in this case, thus overcoming this rejection. Applicants have included an IDS herein which contains those references cited during the prosecution of US 6,929,004 for the examiner's consideration.

### 2. Allegedly Non-Statutory Subject Matter No Longer Claimed

Claim 8 has been objected to as reciting non-statutory subject matter. Claim 8 has been cancelled herein.

### 3. Claim Numbering Is Believed to Be Correct

The examiner indicated that the claim numbering is in error under 1.126, indicating that claim 3 was misnumbered. Applicant has reviewed the file and is unable to find the misnumbered claim referred to. According to applicant's review, claim 3 has never been misnumbered and claim 2 has always been present in the claim set. A complete set of claims is attached hereto.

The claims were renumbered at one point in the international phase of this application (prior to preliminary amendment), however, the applicant corrected this in the preliminary amendment. By way of explanation, the application has evolved as follows:

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The priority application was filed on 24 April 1999, receiving serial number GB 9909354.4. An International Application, claiming priority to the GB Application, was filed via the PCT on 19 April 2000. This PCT Application contained claims 1-89.

An International Preliminary Search Report was issued on 5 June 2001. In response to the IPER, Applicants amended the PCT specification and claims, canceling claim 26, and other claims. Pursuant to acceptable international practice, foreign counsel then renumbered the remaining claims. These amendments are reflected in handwritten notations on the Amended Sheets which were included with the US National Stage application papers.<sup>1</sup>

A Preliminary Amendment was prepared and filed with the US National Phase Application. The Preliminary Amendment sought to avoid confusion by introducing the handwritten amendments of the Amended Sheets in standard US fashion (i.e., striking deleted text and underlining added text) and by *retaining* the claim numbering which was presented in the original application (rather than the renumbered claims which were presented in the Amended Sheets).

Following the then existing USPTO convention, the Preliminary Amendment only set out those claims being amended. The unamended claims were thus not presented. The amended claims were presented in two styles: one, a "clean" form indicating the language of the claims after the amendment, and a second, presented in a "Version to Show Changes Made" appendix to the Amendment. Thus, neither claim 2 nor any other unamended claim was contained in the Preliminary Amendment, however, Claims 1-25 and 27-41 entered prosecution in the USPTO upon filing the Preliminary Amendment. The claim set attached to this amendment represent the current form of the claims.

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<sup>1</sup> Applicant's acknowledge that claims are not renumbered upon cancellation under US National Practice. As noted in the Preliminary Amendment filed in 2001, the claim numbering used in the US National Phase has specifically adopted the numbering of

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Should the examiner find that the claims, as currently numbered, are still unacceptable, applicants suggest that it may be helpful to have a telephonic interview to determine how best to resolve the issue. Thus the examiner is requested to contact applicant's attorney of record, Jim Riek, at (919) 483-8022.

Respectfully submitted,



Dated: Mar 2, 2006

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claims as originally filed in the PCT Application, and has not followed the renumbering used in the Amended Sheets that were submitted prior to National Stage filing.